

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 712

FINAL READING

Introduced by Rogert, 16.

Read first time January 06, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to legal process; to amend sections 25-410,
2 25-1625, 25-2720.01, 25-2803, 25-2804, 28-201, 28-502,
3 28-503, 28-504, 28-1006, 28-1012, 28-1019, 29-818,
4 29-1207, 29-1208, 29-2412, 30-2322, 30-2323, 30-2325,
5 30-2664, 30-2715, 43-1701, 43-1702, 43-1703, 43-1717,
6 43-1718.02, 43-1720, 43-1722, 43-1723, 43-1724, 43-1726,
7 43-1727, 43-3330, 47-502, 49-1501, 69-2304, and 69-2308,
8 Reissue Revised Statutes of Nebraska, and sections
9 25-1628, 43-512.12, and 43-512.15, Revised Statutes
10 Supplement, 2009; to provide for transfer of civil
11 court actions; to change and eliminate provisions
12 relating to juries; to change provisions relating to
13 Small Claims Courts, speedy trials, fines and costs,

1 decedents' estates, and powers of attorney; to change
2 penalty provisions relating to criminal attempt and
3 arson; to provide for seizure of pet animals and equines
4 as prescribed; to provide for transfer-on-death motor
5 vehicle certificates of title; to change provisions
6 relating to support enforcement, reduction of jail
7 sentences, and disposition of tenant personal property by
8 landlords; to harmonize provisions; to provide operative
9 dates; to repeal the original sections; and to declare
10 an emergency.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-410, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-410 (1) For the convenience of the parties and
4 witnesses or in the interest of justice, a district court of
5 any county, the transferor court, may transfer any civil action
6 to the district court of any other county in this state, the
7 transferee court. The transfer may occur before or after the entry
8 of judgment, and there shall be no additional fees required for the
9 transfer.

10 (2) To transfer a civil action, the transferor court
11 shall order transfer of the action to the specific transferee court
12 requested. The clerk of the transferor court shall file with the
13 transferee court within ten days after the entry of the transfer
14 order: Certification of the proceedings; all original documents of
15 the action; certification of the transcript of docket entries; and
16 certification of the payment records of any judgment in the action
17 maintained by the transferor court.

18 (3) Upon the filing of such documents by the clerk of the
19 transferor court, the clerk of the transferee court shall enter any
20 judgment in the action on the judgment record of the transferee
21 court. The judgment, once filed and entered on the judgment record
22 of the transferee court, shall be a lien on the property of the
23 debtor in any county in which such judgment is filed. Transfer of
24 the action shall not change the obligations of the parties under
25 any judgment entered in the action regardless of the status of the

1 transfer.

2 (4) If the transferred civil action involves a support
3 order that has payment records maintained by the Title IV-D
4 Division as defined in section 43-3341, the transferor court order
5 shall notify the division to make the necessary changes in the
6 support payment records. Support payments shall commence in the
7 transferee court on the first day of the month following the order
8 of transfer, payments made prior to such date shall be considered
9 payment on a judgment entered by the transferor court, and payments
10 made on and after such date shall be considered payment on a
11 judgment entered by the transferee court.

12 Sec. 2. Section 25-1625, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 25-1625 (1) In each county of the State of Nebraska there
15 shall be a jury commissioner.

16 (2) In counties having a population of not more than
17 fifty thousand inhabitants, the clerk of the district court shall
18 be jury commissioner ex officio.

19 (3) In counties having a population of more than fifty
20 thousand, and not more than ~~one~~ two hundred ~~fifty~~ thousand
21 inhabitants, the jury commissioner shall be a separate office
22 in the county government or the duties may be performed, when
23 authorized by the judges of the district court within such
24 counties, by the election commissioner. The jury commissioner
25 shall receive an annual salary of not less than twelve hundred

1 dollars.

2 ~~(4)~~ In counties having a population of more than one
3 hundred fifty thousand inhabitants and not more than two hundred
4 thousand inhabitants, the clerk of the district court shall perform
5 the duties of jury commissioner without additional compensation.

6 ~~(5)~~ (4) In counties having a population in excess of
7 two hundred thousand inhabitants, the judges of the district court
8 within such counties shall determine whether the clerk of the
9 district court will perform the duties of jury commissioner without
10 additional compensation or the election commissioner will be jury
11 commissioner ex officio.

12 ~~(6)~~ (5) In all counties the necessary expenses incurred
13 in the performance of the duties of jury commissioner shall be
14 paid by the county board of the county out of the general fund,
15 upon proper claims approved by one of the district judges in the
16 judicial district and duly filed with the county board.

17 ~~(7)~~ (6) In all counties the jury commissioner shall
18 prepare and file the annual inventory statement with the county
19 board of the county of all county personal property in his or her
20 custody or possession, as provided in sections 23-346 to 23-350.

21 Sec. 3. Section 25-1628, Revised Statutes Supplement,
22 2009, is amended to read:

23 25-1628 (1) At least once each calendar year, the
24 officer having charge of the election records shall furnish to
25 the jury commissioner a complete list of the names, dates of

1 birth, ~~and~~ addresses, and motor vehicle operator license numbers
2 or state identification card numbers of all registered electors
3 nineteen years of age or older in the county. The Department
4 of Motor Vehicles shall make available to each jury commissioner
5 each December a list in magnetic, optical, digital, or other
6 electronic format mutually agreed to by the jury commissioner and
7 the department containing the names, dates of birth, ~~and~~ addresses,
8 and motor vehicle operator license numbers or state identification
9 card numbers of all licensed motor vehicle operators and state
10 identification card holders nineteen years of age or older in the
11 county. The jury commissioner may request such a list of licensed
12 motor vehicle operators and state identification card holders from
13 the county treasurer if the county treasurer has an automated
14 procedure for developing such lists. If a jury commissioner
15 requests similar lists at other times from the department, the
16 cost of processing such lists shall be paid by the county which the
17 requesting jury commissioner serves.

18 (2) Upon receipt of both lists described in subsection
19 (1) of this section, the jury commissioner shall combine the
20 separate lists and attempt to reduce duplication to the best of
21 his or her ability to produce a master list. In counties having
22 a population of ~~three~~ seven thousand inhabitants or more, the
23 jury commissioner shall produce a master list at least once each
24 calendar year. In counties having a population of three thousand
25 inhabitants but less than three seven thousand inhabitants, the

1 jury commissioner shall produce a master list at least once every
2 two calendar years. In counties having a population of less than
3 three thousand inhabitants, the jury commissioner shall produce a
4 master list at least once every five calendar years.

5 (3) The proposed juror list shall be derived by selecting
6 from the master list the name of the person whose numerical order
7 on such list corresponds with the key number and each successive
8 tenth name thereafter. The jury commissioner shall certify that
9 the proposed juror list has been made in accordance with sections
10 25-1625 to 25-1637.

11 (4) Any duplication of names on a master list shall not
12 be grounds for quashing any panel pursuant to section 25-1637 or
13 for the disqualification of any juror.

14 Sec. 4. Section 25-2720.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-2720.01 The county court, including the Small Claims
17 Court and the county court when sitting as a juvenile court, shall
18 have the power to set aside default judgments and to vacate or
19 modify its own judgments or orders during or after the term at
20 which such judgments or orders were made in the same manner as
21 provided for actions filed in the district court.

22 Sec. 5. Section 25-2803, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-2803 (1) Parties in the Small Claims Court may
25 be individuals, partnerships, limited liability companies,

1 corporations, unions, associations, or any other kind of
2 organization or entity.

3 (2) No party shall be represented by an attorney in the
4 Small Claims Court except as provided in ~~section~~ sections 25-2804
5 and 25-2805.

6 (3) An individual shall represent himself or herself in
7 the Small Claims Court. A partnership shall be represented by a
8 partner or one of its employees. A limited liability company shall
9 be represented by a member, a manager, or one of its employees.
10 A union shall be represented by a union member or union employee.
11 A corporation shall be represented by one of its employees. An
12 association shall be represented by one of its members or by an
13 employee of the association. Any other kind of organization or
14 entity shall be represented by one of its members or employees.

15 (4) Only a party, natural or otherwise, who has been a
16 party to the transaction with the defendant for which the claim is
17 brought may file and prosecute a claim in the Small Claims Court.

18 (5) No party may file an assigned claim in the Small
19 Claims Court.

20 (6) No party shall file more than two claims within any
21 calendar week nor more than ten claims in any calendar year in
22 the Small Claims Court. This subsection shall not apply to actions
23 brought pursuant to section 25-21,194.

24 (7) Notwithstanding any other provision of this section,
25 a personal representative of a decedent's estate, a guardian, or a

1 conservator may be a party in the Small Claims Court.

2 Sec. 6. Section 25-2804, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 25-2804 (1) Actions in the Small Claims Court shall be
5 commenced by the filing of a claim, personally or by mail, by
6 the plaintiff on a form provided by the clerk of a county court.
7 The claim form shall be executed by the plaintiff in the presence
8 of a judge, a clerk or deputy or assistant clerk of a county
9 court, or a notary public or other person authorized by law to
10 take acknowledgments. If not filed in person, the claim form and
11 appropriate fees shall be mailed by the plaintiff to the court of
12 proper jurisdiction.

13 (2) At the time of the filing of the claim, the plaintiff
14 shall pay a fee of six dollars and twenty-five cents to the clerk.
15 One dollar and twenty-five cents of such fee shall be remitted to
16 the State Treasurer for credit to the Nebraska Retirement Fund for
17 Judges.

18 (3) Upon filing of a claim in the Small Claims Court,
19 the court shall set a time for hearing and shall cause notice to
20 be served upon the defendant. Notice shall be served not less than
21 five days before the time set for hearing. Notice shall consist
22 of a copy of the complaint and a summons directing the defendant
23 to appear at the time set for hearing and informing the defendant
24 that if he or she fails to appear, judgment will be entered against
25 him or her. Notice shall be served in the manner provided for

1 service of a summons in a civil action. If the notice is to be
2 served by certified mail, the clerk shall provide the plaintiff
3 with written instructions, prepared and provided by the State
4 Court Administrator, regarding the proper procedure for service by
5 certified mail. The cost of service shall be paid by the plaintiff,
6 but such cost and filing fee shall be added to any judgment given
7 the plaintiff.

8 (4) The defendant may file a setoff or counterclaim. Any
9 setoff or counterclaim shall be filed and a copy delivered to
10 the plaintiff at least two days prior to the time of trial. If
11 the setoff or counterclaim exceeds the jurisdictional limits of
12 the Small Claims Court as established pursuant to section 25-2802,
13 the court shall cause the entire matter to be transferred to the
14 regular county court docket and set for trial.

15 (5) No prejudgment actions for attachment, garnishment,
16 replevin, or other provisional remedy may be filed in the Small
17 Claims Court.

18 (6) All forms required by this section shall be
19 prescribed by the Supreme Court. The claim form shall provide for
20 the names and addresses of the plaintiff and defendant, a concise
21 statement of the nature, amount, and time and place of accruing of
22 the claim, and an acknowledgment for use by the person in whose
23 presence the claim form is executed and shall also contain a brief
24 explanation of the Small Claims Court procedure and methods of
25 appeal therefrom.

1 ~~(7) Judgments rendered against a defendant in his or her~~
2 ~~absence may not be set aside but may only be appealed as governed~~
3 ~~by section 25-2807.~~

4 (7) For a default judgment rendered by a Small Claims
5 Court (a) the default judgment may be appealed as provided in
6 section 25-2807, (b) if a motion for a new trial, by the procedure
7 provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten
8 days or less after entry of the default judgment, the court may act
9 upon the motion without a hearing, or (c) if more than ten days
10 have passed since the entry of the default judgment, the court may
11 set aside, vacate, or modify the default judgment as provided in
12 section 25-2720.01. Parties may be represented by attorneys for the
13 purpose of filing a motion for a new trial or to set aside, vacate,
14 or modify a default judgment.

15 Sec. 7. Section 28-201, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 28-201 (1) A person shall be guilty of an attempt to
18 commit a crime if he or she:

19 (a) Intentionally engages in conduct which would
20 constitute the crime if the attendant circumstances were as he or
21 she believes them to be; or

22 (b) Intentionally engages in conduct which, under the
23 circumstances as he or she believes them to be, constitutes a
24 substantial step in a course of conduct intended to culminate in
25 his or her commission of the crime.

1 (2) When causing a particular result is an element of
 2 the crime, a person shall be guilty of an attempt to commit the
 3 crime if, acting with the state of mind required to establish
 4 liability with respect to the attendant circumstances specified in
 5 the definition of the crime, he or she intentionally engages in
 6 conduct which is a substantial step in a course of conduct intended
 7 or known to cause such a result.

8 (3) Conduct shall not be considered a substantial step
 9 under this section unless it is strongly corroborative of the
 10 defendant's criminal intent.

11 (4) Criminal attempt is:

12 (a) A Class II felony when the crime attempted is a Class
 13 I, ~~Class IA, or Class IB~~ IA, IB, IC, or ID felony;

14 (b) A Class III felony when the crime attempted is a
 15 Class II felony;

16 (c) A Class IIIA felony when the crime attempted
 17 is ~~assault in the first degree under section 28-308, sexual~~
 18 ~~assault in the second degree under section 28-320, manufacturing,~~
 19 ~~distributing, delivering, dispensing, or possessing with intent to~~
 20 ~~manufacture, distribute, deliver, or dispense controlled substances~~
 21 ~~listed in Schedule I, II, or III of section 28-405 under section~~
 22 ~~28-416 except for an exceptionally hazardous drug, a violation of~~
 23 ~~subdivision (2)(b) of section 28-416, incest under section 28-703,~~
 24 ~~child abuse under subsection (5) of section 28-707, assault on an~~
 25 ~~officer in the second degree under section 28-930, or assault by~~

1 a confined person with a deadly or dangerous weapon under section
2 28-932;

3 (d) A Class IV felony when the crime attempted is a Class
4 III felony not listed in subdivision (4)(c) of this section;

5 (e) A Class I misdemeanor when the crime attempted is a
6 Class IIIA or Class IV felony;

7 (f) A Class II misdemeanor when the crime attempted is a
8 Class I misdemeanor; and

9 (g) A Class III misdemeanor when the crime attempted is
10 a Class II misdemeanor.

11 Sec. 8. Section 28-502, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-502 (1) A person commits arson in the first degree if
14 he or she intentionally damages a building or property contained
15 within a building by starting a fire or causing an explosion
16 when another person is present in the building at the time and
17 either (a) the actor knows that fact, or (b) the circumstances are
18 such as to render the presence of a person therein a reasonable
19 probability.

20 (2) A person commits arson in the first degree if a fire
21 is started or an explosion is caused in the perpetration of any
22 robbery, burglary, or felony criminal mischief when another person
23 is present in the building at the time and either (a) the actor
24 knows that fact, or (b) the circumstances are such as to render the
25 presence of a person therein a reasonable probability.

1 (3) Arson in the first degree is a Class II felony.

2 Sec. 9. Section 28-503, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-503 (1) A person commits arson in the second degree if
5 he or she intentionally damages a building or property contained
6 within a building by starting a fire or causing an explosion or if
7 a fire is started or an explosion is caused in the perpetration of
8 any robbery, burglary, or felony criminal mischief.

9 (2) The following affirmative defenses may be introduced
10 into evidence upon prosecution for a violation of this section:

11 (a) No person other than the accused has a security or
12 proprietary interest in the damaged building, or, if other persons
13 have such interests, all of them consented to his or her conduct;
14 or

15 (b) The accused's sole intent was to destroy or damage
16 the building for a lawful and proper purpose.

17 (3) Arson in the second degree is a Class III felony.

18 Sec. 10. Section 28-504, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 28-504 (1) A person commits arson in the third degree if
21 he or she intentionally sets fire to, burns, causes to be burned,
22 or by the use of any explosive, damages or destroys, or causes to
23 be damaged or destroyed, any property of another person without his
24 such other person's consent. Such property shall not be contained
25 within a building and shall not be ~~7 other than~~ a building or

1 occupied structure.

2 (2) Arson in the third degree is a Class IV felony if the
3 damages amount to one hundred dollars or more.

4 (3) Arson in the third degree is a Class I misdemeanor if
5 the damages are less than one hundred dollars.

6 Sec. 11. Section 28-1006, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-1006 (1) It shall be the duty of the sheriff, a police
9 officer, or the Nebraska State Patrol to make prompt investigation
10 of and arrest for any violation of section 28-1005.

11 (2) Any animal, equipment, device, or other property
12 or things involved in any violation of section 28-1005 shall be
13 subject to seizure, and disposition may be made in accordance
14 with the method of disposition directed for contraband in ~~section~~
15 sections 29-818 and 29-820.

16 (3) Any animal involved in any violation of section
17 28-1005 shall be subject to seizure. Distribution or disposition
18 ~~may shall be made as provided in section 29-818 and~~ in such manner
19 as the court may direct. The court may give preference to adoption
20 alternatives through humane societies or comparable institutions
21 and to the protection of such animal's welfare. For a humane
22 society or comparable institution to be considered as an adoption
23 alternative under this subsection, it must first be licensed by
24 the Department of Agriculture as having passed the inspection
25 requirements in the Commercial Dog and Cat Operator Inspection

1 Act and paid the fee for inspection under the act. The court may
2 prohibit an adopting or purchasing party from selling such animal
3 for a period not to exceed one year.

4 (4) In addition to any other sentence given for a
5 violation of section 28-1005, the sentencing court may order the
6 defendant to reimburse a public or private agency for expenses
7 incurred in conjunction with the care, impoundment, or disposal,
8 including adoption, of an animal involved in the violation of
9 such section. Whenever the court believes that such reimbursement
10 may be a proper sentence or the prosecuting attorney requests,
11 the court shall order that the presentence investigation report
12 include documentation regarding the nature and amount of the
13 expenses incurred. The court may order that reimbursement be made
14 immediately, in specified installments, or within a specified
15 period of time, not to exceed five years after the date of
16 judgment.

17 Sec. 12. Section 28-1012, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-1012 (1) Any law enforcement officer who has reason
20 to believe that an animal has been abandoned or is being cruelly
21 neglected or cruelly mistreated may seek a warrant authorizing
22 entry upon private property to inspect, care for, or impound the
23 animal.

24 (2) Any law enforcement officer who has reason to believe
25 that an animal has been abandoned or is being cruelly neglected or

1 cruelly mistreated may issue a citation to the owner as prescribed
2 in sections 29-422 to 29-429.

3 (3) Any animal, equipment, device, or other property or
4 things involved in a violation of section 28-1009 or 28-1010 shall
5 be subject to seizure and distribution or disposition ~~may~~ shall
6 be made under section 29-818 and in such manner as the court may
7 direct.

8 (4) Any animal involved in a violation of section
9 28-1009 or 28-1010 shall be subject to seizure. Distribution
10 or disposition ~~may~~ shall be made under section 29-818 and in such
11 manner as the court may direct. The court may consider adoption
12 alternatives through humane societies or comparable institutions
13 and the protection of such animal's welfare. For a humane
14 society or comparable institution to be considered as an adoption
15 alternative under this subsection, it must first be licensed by
16 the Department of Agriculture as having passed the inspection
17 requirements in the Commercial Dog and Cat Operator Inspection
18 Act and paid the fee for inspection under the act. The court may
19 prohibit an adopting or purchasing party from selling such animal
20 for a period not to exceed one year.

21 (5) Any law enforcement officer acting under this section
22 shall not be liable for damage to property if such damage is not
23 the result of the officer's negligence.

24 Sec. 13. Section 28-1019, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 28-1019 (1)(a) If a person is convicted of a Class IV
2 felony under section 28-1005 or 28-1009, the sentencing court shall
3 order such person not to own, possess, or reside with any animal
4 for at least five years after the date of conviction, but such time
5 restriction shall not exceed fifteen years. Any person violating
6 such court order shall be guilty of a Class I misdemeanor.

7 (b) If a person is convicted of a Class I misdemeanor
8 under subdivision (2)(a) of section 28-1009 or a Class III
9 misdemeanor under section 28-1010, the sentencing court may order
10 such person not to own, possess, or reside with any animal after
11 the date of conviction, but such time restriction, if any, shall
12 not exceed five years. Any person violating such court order shall
13 be guilty of a Class IV misdemeanor.

14 (c) Any animal involved in a violation of a court order
15 under subdivision (a) or (b) of this subsection shall be subject
16 to seizure by law enforcement. Distribution or disposition shall be
17 made under section 29-818.

18 (2) This section shall not apply to any person convicted
19 under section 28-1005 or 28-1009 if a licensed physician confirms
20 in writing that ownership or possession of or residence with an
21 animal is essential to the health of such person.

22 Sec. 14. Section 29-818, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-818 ~~Property~~ (1) Except for pet animals or equines
25 as provided in subsection (2) of this section, property seized

1 under a search warrant or validly seized without a warrant shall
2 be safely kept by the officer seizing the same unless otherwise
3 directed by the judge or magistrate, and shall be so kept so long
4 as necessary for the purpose of being produced as evidence on any
5 trial. Property seized may not be taken from the officer having it
6 in custody by replevin or other writ so long as it is or may be
7 required as evidence in any trial, nor may it be so taken in any
8 event where a complaint has been filed in connection with which
9 the property was or may be used as evidence, and the court in
10 which such complaint was filed shall have exclusive jurisdiction
11 for disposition of the property or funds and to determine rights
12 therein, including questions respecting the title, possession,
13 control, and disposition thereof.

14 (2) (a) Any pet animal or equine seized under a search
15 warrant or validly seized without a warrant may be kept by the
16 officer seizing the same on the property of the person who owns,
17 keeps, harbors, maintains, or controls such pet animal or equine.

18 (b) When any pet animal or equine is seized or held the
19 court shall provide the person who owns, keeps, harbors, maintains,
20 or controls such pet animal or equine with notice that a hearing
21 will be had and specify the date, time, and place of such hearing.
22 Such notice shall be served by personal or residential service or
23 by certified mail. If such notice cannot be served by such methods,
24 service may be made by publication in the county where such pet
25 animal or equine was seized. Such publication shall be made after

1 application and order of the court. Unless otherwise determined and
2 ordered by the court, the date of such hearing shall be no later
3 than ten days after the seizure.

4 (c) At the hearing, the court shall determine the
5 disposition of the pet animal or equine, and if the court
6 determines that any pet animal or equine shall not be returned, the
7 court shall order the person from whom the pet animal or equine
8 was seized to pay all expenses for the support and maintenance of
9 the pet animal or equine, including expenses for shelter, food,
10 veterinary care, and board, necessitated by the possession of the
11 pet animal or equine. At the hearing, the court shall also consider
12 the person's ability to pay for the expenses of the pet animal
13 or equine and the amount of such payments. Payments shall be for
14 a succeeding thirty-day period with the first payment due on or
15 before the tenth day following the hearing. Payments for each
16 subsequent succeeding thirty-day period, if any, shall be due on or
17 before the tenth day of such period.

18 (d) If a person becomes delinquent in his or her payments
19 for the expenses of the pet animal or equine, the court shall hold
20 a hearing to determine the disposition of the seized pet animal or
21 equine. Notice of such hearing shall be given to the person who
22 owns, keeps, harbors, maintains, or controls such pet animal or
23 equine and to any lienholder or security interest holder of record
24 as provided in subdivision (b) of this subsection.

25 (e) An appeal may be entered within ten days after a

1 hearing under subdivision (c) or (d) of this subsection. Any person
2 filing an appeal shall post a bond sufficient to pay all costs of
3 care of the pet animal or equine for thirty days. Such payment will
4 be required for each succeeding thirty-day period until the appeal
5 is final.

6 (f) Should the person be found not guilty, all funds paid
7 for the expenses of the pet animal or equine shall be returned to
8 the person.

9 (g) For purposes of this subsection:

10 (i) Pet animal means any domestic dog, domestic cat, mini
11 pig, domestic rabbit, domestic ferret, domestic rodent, bird except
12 a bird raised as an agricultural animal and specifically excluding
13 any bird possessed under a license issued by the State of Nebraska
14 or the United States Fish and Wildlife Service, nonlethal aquarium
15 fish, nonlethal invertebrate, amphibian, turtle, nonvenomous snake
16 that will not grow to more than eight feet in length at maturity,
17 or such other animal as may be specified and for which a permit
18 shall be issued by an animal control authority after inspection and
19 approval, except that any animal forbidden to be sold, owned, or
20 possessed by federal or state law is not a pet animal; and

21 (ii) Equine means a horse, pony, donkey, mule, hinny, or
22 llama.

23 (h) This section shall not preempt, and shall not be
24 construed to preempt, any ordinance of a city of the metropolitan
25 class.

1 Sec. 15. Section 29-1207, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-1207 (1) Every person indicted or informed against for
4 any offense shall be brought to trial within six months, and such
5 time shall be computed as provided in this section.

6 (2) Such six-month period shall commence to run from the
7 date the indictment is returned or the information filed, unless
8 the offense is a misdemeanor offense involving intimate partners,
9 as that term is defined in section 28-323, in which case the
10 six-month period shall commence from the date the defendant is
11 arrested on a complaint filed as part of a warrant for arrest.

12 (3) If a defendant is to be tried again following a
13 mistrial, an order for a new trial, or an appeal or collateral
14 attack, such period shall commence to run from the date of the
15 mistrial, order granting a new trial, or the mandate on remand.

16 (4) The following periods shall be excluded in computing
17 the time for trial:

18 (a) The period of delay resulting from other proceedings
19 concerning the defendant, including, but not limited to, an
20 examination and hearing on competency and the period during which
21 he or she is incompetent to stand trial; the time from filing until
22 final disposition of pretrial motions of the defendant, including
23 motions to suppress evidence, motions to quash the indictment or
24 information, demurrers and pleas in abatement, and motions for a
25 change of venue; and the time consumed in the trial of other

1 charges against the defendant;

2 (b) The period of delay resulting from a continuance
3 granted at the request or with the consent of the defendant or his
4 or her counsel. A defendant without counsel shall not be deemed to
5 have consented to a continuance unless he or she has been advised
6 by the court of his or her right to a speedy trial and the effect
7 of his or her consent. A defendant who has sought and obtained a
8 continuance which is indefinite has an affirmative duty to end the
9 continuance by giving notice of request for trial or the court can
10 end the continuance by setting a trial date. When the court ends
11 an indefinite continuance by setting a trial date, the excludable
12 period resulting from the indefinite continuance ends on the date
13 for which trial commences. A defendant is deemed to have waived his
14 or her right to speedy trial when the period of delay resulting
15 from a continuance granted at the request of the defendant or
16 his or her counsel extends the trial date beyond the statutory
17 six-month period;

18 (c) The period of delay resulting from a continuance
19 granted at the request of the prosecuting attorney, if:

20 (i) The continuance is granted because of the
21 unavailability of evidence material to the state's case, when the
22 prosecuting attorney has exercised due diligence to obtain such
23 evidence and there are reasonable grounds to believe that such
24 evidence will be available at the later date; or

25 (ii) The continuance is granted to allow the prosecuting

1 attorney additional time to prepare the state's case and additional
2 time is justified because of the exceptional circumstances of the
3 case;

4 (d) The period of delay resulting from the absence or
5 unavailability of the defendant;

6 (e) A reasonable period of delay when the defendant is
7 joined for trial with a codefendant as to whom the time for trial
8 has not run and there is good cause for not granting a severance.
9 In all other cases, the defendant shall be granted a severance so
10 that he or she may be tried within the time limits applicable to
11 him or her; and

12 (f) Other periods of delay not specifically enumerated in
13 this section, but only if the court finds that they are for good
14 cause.

15 Sec. 16. Section 29-1208, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 29-1208 If a defendant is not brought to trial before the
18 running of the time for trial as provided for in section 29-1207,
19 as extended by excluded periods, he or she shall be entitled to
20 his or her absolute discharge from the offense charged and for any
21 other offense required by law to be joined with that offense.

22 Sec. 17. Section 29-2412, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-2412 (1) Whenever it is made satisfactorily to appear
25 to the district court, or to the county judge of the proper county,

1 after all legal means have been exhausted, that any person who is
2 subject to being or is confined in jail for any fine or costs of
3 prosecution for any criminal offense has no estate with which to
4 pay such fine or costs, it shall be the duty of such court or
5 judge, on his or her own motion or upon the motion of the person
6 so confined, to discharge such person from further imprisonment for
7 such fine or costs, which discharge shall operate as a complete
8 release of such fine or costs.

9 (2) Nothing in this section shall authorize any person to
10 be discharged from imprisonment before the expiration of the time
11 for which he or she may be sentenced to be imprisoned, as part
12 of his or her punishment, or when such person shall default on a
13 payment due pursuant to an installment agreement arranged by the
14 court.

15 (3) Any person held in custody for nonpayment of a fine
16 or costs or for default on an installment shall be entitled to a
17 credit on the fine, costs, or installment of ~~sixty~~ ninety dollars
18 for each day so held. In no case shall a person held in custody
19 for nonpayment of a fine or costs be held in such custody for more
20 days than the maximum number to which he or she could have been
21 sentenced if the penalty set by law includes the possibility of
22 confinement.

23 Sec. 18. Section 30-2322, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 30-2322 A surviving spouse of a decedent who was

1 domiciled in this state is entitled to a homestead allowance
2 of seven thousand five hundred dollars for a decedent who dies
3 before January 1, 2011, and twenty thousand dollars for a decedent
4 who dies on or after January 1, 2011. If there is no surviving
5 spouse, each minor child and each dependent child of the decedent
6 is entitled to a homestead allowance amounting to ~~seven thousand~~
7 ~~five hundred dollars~~ the amount allowed for a surviving spouse
8 divided by the number of minor and dependent children of the
9 decedent. The homestead allowance is exempt from and has priority
10 over all claims against the estate except for costs and expenses
11 of administration. Homestead allowance is in addition to any share
12 passing to the surviving spouse or minor or dependent child by
13 the will of the decedent unless otherwise provided therein, by
14 intestate succession or by way of elective share.

15 Sec. 19. Section 30-2323, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 30-2323 (1) In addition to the homestead allowance, the
18 surviving spouse of a decedent who was domiciled in this state
19 is entitled from the estate to value not exceeding five thousand
20 dollars for a decedent who dies before January 1, 2011, and twelve
21 thousand five hundred dollars for a decedent who dies on or after
22 January 1, 2011, in excess of any security interests therein
23 in household furniture, automobiles, furnishings, appliances, and
24 personal effects. If there is no surviving spouse, children of the
25 decedent are entitled jointly to the same value unless the decedent

1 has provided in his or her will that one or more of such children
2 shall be disinherited, in which case only those children not so
3 disinherited shall be so entitled. For purposes of this section,
4 disinherited means providing in one's will that a child shall take
5 nothing or a nominal amount of ten dollars or less from the estate.

6 (2) If encumbered chattels are selected and if the
7 value in excess of security interests, plus that of other exempt
8 property, is less than ~~five thousand dollars,~~ the amount allowed
9 under subsection (1) of this section, or if there is not ~~five~~
10 ~~thousand dollars~~ that amount worth of exempt property in the
11 estate, the spouse or children are entitled to other assets of
12 the estate, if any, to the extent necessary to make up the ~~five~~
13 ~~thousand dollars value.~~ amount allowed under subsection (1) of this
14 section. Rights to exempt property and assets needed to make up a
15 deficiency of exempt property have priority over all claims against
16 the estate except for costs and expenses of administration, except
17 for claims filed by the Department of Health and Human Services
18 pursuant to section 68-919 notwithstanding the order of payment
19 established in section 30-2487, and except that the right to any
20 assets to make up a deficiency of exempt property shall abate as
21 necessary to permit prior payment of homestead allowance and family
22 allowance.

23 (3) These rights are in addition to any benefit or share
24 passing to the surviving spouse by the will of the decedent unless
25 otherwise provided therein, by intestate succession, or by way of

1 elective share. These rights are in addition to any benefit or
2 share passing to the surviving children by intestate succession and
3 are in addition to any benefit or share passing by the will of
4 the decedent to those surviving children not disinherited unless
5 otherwise provided in the will.

6 Sec. 20. Section 30-2325, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 30-2325 If the estate is otherwise sufficient, property
9 specifically devised is not used to satisfy rights to homestead and
10 exempt property. Subject to this restriction, the surviving spouse,
11 the guardians of the minor children, or children who are adults
12 may select property of the estate as homestead allowance and exempt
13 property. After giving such notice as the court may require in a
14 proceeding initiated under the provisions of section 30-2405, the
15 personal representative may make these selections if the surviving
16 spouse, the children or the guardians of the minor children are
17 unable or fail to do so within a reasonable time or if there are
18 no guardians of the minor children. The personal representative
19 may execute an instrument or deed of distribution to establish
20 the ownership of property taken as homestead allowance or exempt
21 property. ~~He or she~~ The personal representative may determine the
22 family allowance in a lump sum not exceeding nine thousand dollars
23 for a decedent who dies before January 1, 2011, and twenty thousand
24 dollars for a decedent who dies on or after January 1, 2011, or
25 periodic installments not exceeding seven hundred fifty dollars per

1 month for one year for a decedent who dies before January 1, 2011,
2 and one thousand six hundred sixty-six dollars and sixty-seven
3 cents per month for one year, and for a decedent who dies on or
4 after January 1, 2011. The personal representative may disburse
5 funds of the estate in payment of the family allowance and any
6 part of the homestead allowance payable in cash. The personal
7 representative or any interested person aggrieved by any selection,
8 determination, payment, proposed payment, or failure to act under
9 this section may petition the court for appropriate relief, which
10 relief may provide a family allowance larger or smaller than
11 that which the personal representative determined or could have
12 determined.

13 The homestead allowance, the exempt property, and
14 the family allowance as finally determined by the personal
15 representative or by the court, shall vest in the surviving spouse
16 as of the date of decedent's death, as a vested indefeasible right
17 of property, shall survive as an asset of the surviving spouse's
18 estate if unpaid on the date of death of such surviving spouse, and
19 shall not terminate upon the death or remarriage of the surviving
20 spouse.

21 Sec. 21. Section 30-2664, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 30-2664 Sections 30-2664 to 30-2672 and section 22 of
24 this act shall be known and may be cited as the Uniform Durable
25 Power of Attorney Act.

1 Sec. 22. An agent or attorney in fact under a durable
2 power of attorney may do the following on behalf of the principal
3 or with the principal's property only if the durable power of
4 attorney expressly grants the agent or attorney in fact the
5 authority and exercise of the authority is not otherwise prohibited
6 by another agreement or instrument to which the authority or
7 property is subject:

8 (1) Create or change rights of survivorship; or

9 (2) Create or change a beneficiary designation.

10 Sec. 23. (1) A person who owns a motor vehicle may
11 provide for the transfer of such vehicle upon his or her death or
12 the death of the last survivor of a joint tenancy with right of
13 survivorship by including in the certificate of title a designation
14 of beneficiary or beneficiaries to whom the vehicle will be
15 transferred on the death of the owner or the last survivor,
16 subject to the rights of all lienholders, whether created before,
17 simultaneously with, or after the creation of the transfer-on-death
18 interest. A trust may be the beneficiary of a transfer-on-death
19 certificate of title. The certificate of title shall include the
20 name of the owner, the name of any tenant-in-common owner or the
21 name of any joint-tenant-with-right-of-survivorship owner, followed
22 in substance by the words transfer on death to (name of beneficiary
23 or beneficiaries or name of trustee if a trust is to be the
24 beneficiary). The abbreviation TOD may be used instead of the words
25 transfer on death to.

1 (2) A transfer-on-death beneficiary shall have no
2 interest in the motor vehicle until the death of the owner or
3 the last survivor of the joint-tenant-with-right-of-survivorship
4 owners. A beneficiary designation may be changed at any time by
5 the owner or by the joint-tenant-with-right-of-survivorship owners
6 then surviving without the consent of any beneficiary by filing an
7 application for a subsequent certificate of title.

8 (3) Ownership of a motor vehicle which has a designation
9 of beneficiary as provided in subsection (1) of this section
10 and for which an application for a subsequent certificate of
11 title has not been filed shall vest in the designated beneficiary
12 or beneficiaries on the death of the owner or the last of
13 the joint-tenant-with-right-of-survivorship owners, subject to the
14 rights of all lienholders.

15 Sec. 24. Section 30-2715, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 30-2715 (a) A provision for a nonprobate transfer on
18 death in an insurance policy, contract of employment, bond,
19 mortgage, promissory note, certificated or uncertificated security,
20 account agreement, custodial agreement, deposit agreement,
21 compensation plan, pension plan, individual retirement plan,
22 employee benefit plan, trust, marital property agreement,
23 certificate of title, or other written instrument of a similar
24 nature is nontestamentary. This subsection includes a written
25 provision that:

1 (1) money or other benefits due to, controlled by, or
2 owned by a decedent before death must be paid after the decedent's
3 death to a person whom the decedent designates either in the
4 instrument or in a separate writing, including a will, executed
5 either before or at the same time as the instrument, or later;

6 (2) money due or to become due under the instrument
7 ceases to be payable in the event of death of the promisee or the
8 promisor before payment or demand; or

9 (3) any property controlled by or owned by the decedent
10 before death which is the subject of the instrument passes to a
11 person the decedent designates either in the instrument or in a
12 separate writing, including a will, executed either before or at
13 the same time as the instrument, or later.

14 (b) This section does not limit rights of creditors under
15 other laws of this state.

16 Sec. 25. Section 43-512.12, Revised Statutes Supplement,
17 2009, is amended to read:

18 43-512.12 (1) Child support orders in cases in which
19 a party has applied for services under Title IV-D of the
20 federal Social Security Act, as amended, shall be reviewed by
21 the Department of Health and Human Services to determine whether
22 to refer such orders to the county attorney or authorized attorney
23 for filing of an application for modification. An order shall
24 be reviewed by the department upon its own initiative or at the
25 request of either parent when such review is required by Title IV-D

1 of the federal Social Security Act, as amended. After review the
 2 department shall refer an order to a county attorney or authorized
 3 attorney when the verifiable financial information available to the
 4 department indicates:

5 ~~(1)~~ (a) The present child support obligation varies from
 6 the Supreme Court child support guidelines pursuant to section
 7 42-364.16 by more than the percentage, amount, or other criteria
 8 established by Supreme Court rule, and the variation is due to
 9 financial circumstances which have lasted at least three months and
 10 can reasonably be expected to last for an additional six months; or

11 ~~(2)~~ (b) Health care coverage meeting the requirements
 12 of subsection (2) of section 42-369 is available to either party
 13 and the children do not have health care coverage other than
 14 the medical assistance program under the Medical Assistance Act. ~~An~~
 15 ~~order~~ Health care coverage cases may be modified within three years
 16 of entry of the order.

17 (2) Orders that are not addressed under subsection (1)
 18 of this section shall not be reviewed by the department if it has
 19 not been three years since the present child support obligation was
 20 ordered. ~~An order shall not be reviewed by the department more than~~
 21 ~~once every three years~~ unless the requesting party demonstrates
 22 a substantial change in circumstances, ~~and an~~ that is expected
 23 to last for the applicable time period established by subdivision
 24 (1)(a) of this section. Such substantial change in circumstances
 25 may include, but is not limited to, change in employment, earning

1 capacity, or income or receipt of an ongoing source of income from
2 a pension, gift, or lottery winnings. An order may be reviewed
3 after one year if the department's determination after the previous
4 review was not to refer to the county attorney or authorized
5 attorney for filing of an application for modification because
6 financial circumstances had not lasted or were not expected to last
7 for the time periods established by subdivision ~~(1)~~ (1)(a) of this
8 section.

9 Sec. 26. Section 43-512.15, Revised Statutes Supplement,
10 2009, is amended to read:

11 43-512.15 (1) The county attorney or authorized attorney,
12 upon referral from the Department of Health and Human Services,
13 shall file a complaint to modify a child support order unless the
14 attorney determines in the exercise of independent professional
15 judgment that:

16 (a) The variation from the Supreme Court child support
17 guidelines pursuant to section 42-364.16 is based on material
18 misrepresentation of fact concerning any financial information
19 submitted to the attorney;

20 (b) The variation from the guidelines is due to a
21 voluntary reduction in net monthly income. For purposes of this
22 section, a person who has been incarcerated for a period of one
23 year or more in a county or city jail or a federal or state
24 correctional facility shall be considered to have an involuntary
25 reduction of income unless (i) the incarceration is a result of

1 a conviction for criminal nonsupport pursuant to section 28-706
2 or a conviction for a violation of any federal law or law
3 of another state substantially similar to section 28-706, (ii)
4 the incarcerated individual has a documented record of willfully
5 failing or neglecting to provide proper support which he or
6 she knew or reasonably should have known he or she was legally
7 obligated to provide when he or she had sufficient resources to
8 provide such support, or (iii) the incarceration is a result of a
9 conviction for a crime in which the child who is the subject of the
10 child support order was victimized; or

11 (c) When the amount of the order is considered with all
12 the other undisputed facts in the case, no variation from the
13 criteria set forth in subdivisions ~~(1)~~ and ~~(2)~~ (1)(a) and (b) of
14 section 43-512.12 exists.

15 (2) The department, a county attorney, or an authorized
16 attorney shall not in any case be responsible for reviewing or
17 filing an application to modify child support for individuals
18 incarcerated as described in subdivision (1)(b) of this section.

19 (3) The proceedings to modify a child support order shall
20 comply with section 42-364, and the county attorney or authorized
21 attorney shall represent the state in the proceedings.

22 (4) After a complaint to modify a child support order is
23 filed, any party may choose to be represented personally by private
24 counsel. Any party who retains private counsel shall so notify the
25 county attorney or authorized attorney in writing.

1 Sec. 27. Section 43-1701, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 43-1701 Sections 43-1701 to 43-1743 and section 30 of
4 this act shall be known and may be cited as the Income Withholding
5 for Child Support Act.

6 Sec. 28. Section 43-1702, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 43-1702 It is the intent of the Legislature to encourage
9 the use of all proven techniques for the collection of child,
10 spousal, and medical support and monetary judgments. While income
11 withholding is the preferred technique, other techniques such as
12 liens on property and contempt proceedings should be used when
13 appropriate. The purpose of the Income Withholding for Child
14 Support Act is to provide a simplified and relatively automatic
15 procedure for implementing income withholding in order to guarantee
16 that child, spousal, and medical support obligations and monetary
17 judgments are met when income is available for that purpose, to
18 encourage voluntary withholding by obligors, and to facilitate
19 the implementation of income withholding based on foreign support
20 orders.

21 Sec. 29. Section 43-1703, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 43-1703 For purposes of the Income Withholding for Child
24 Support Act, unless the context otherwise requires, the definitions
25 found in sections 43-1704 to 43-1717 and section 30 of this act

1 shall be used.

2 Sec. 30. Monetary judgment shall mean a monetary judgment
3 against an obligor that is unsatisfied and is owed to the federal
4 or state governmental unit in a case in which services are being
5 provided under Title IV-D of the federal Social Security Act, as
6 amended, and the judgment is related to the support of a child.
7 Monetary judgment includes, but is not limited to, the cost of
8 genetic testing that the obligor has been ordered to pay by a
9 court, plus any accumulated interest on the judgment under sections
10 45-103 to 45-103.04, whether the order was issued prior to, on, or
11 after the operative date of this section.

12 Sec. 31. Section 43-1717, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 43-1717 Support order shall mean any order, decree, or
15 judgment for child, spousal, or medical support or for payment
16 of any arrearage for such support issued by a court or agency
17 of competent jurisdiction, whether issued prior to, on, or after
18 November 16, 1985, whether for temporary or permanent support,
19 whether interlocutory or final, whether or not modifiable, and
20 whether or not incidental to a proceeding for dissolution of
21 marriage, judicial or legal separation, separate maintenance,
22 paternity, guardianship, or civil protection or any other action. A
23 support order may include payment for any monetary judgment.

24 Sec. 32. Section 43-1718.02, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 43-1718.02 (1) In any case in which services are not
2 provided under Title IV-D of the federal Social Security Act, as
3 amended, and a support order has been issued or modified on or
4 after July 1, 1994, the obligor's income shall be subject to income
5 withholding regardless of whether or not payments pursuant to such
6 order are in arrears, and the court shall require such income
7 withholding in its order unless:

8 (a) One of the parties demonstrates and the court
9 finds that there is good cause not to require immediate income
10 withholding; or

11 (b) A written agreement between the parties providing an
12 alternative arrangement is incorporated into the support order.

13 (2) If the court pursuant to subsection (1) of this
14 section orders income withholding regardless of whether or not
15 payments are in arrears, the obligor shall prepare a notice
16 to withhold income. The notice to withhold income shall be
17 substantially similar to a prototype prepared by the department and
18 made available by the department to the State Court Administrator
19 and the clerks of the district courts. The notice to withhold shall
20 direct:

21 (a) That the employer or other payor shall withhold
22 from the obligor's disposable income the amount stated in the
23 notice to withhold for the purpose of satisfying the obligor's
24 ongoing obligation for support payments as they become due, ~~and~~ if
25 there are arrearages, ~~reducing~~ to reduce such arrearages in child,

1 spousal, or medical support payments arising from the obligor's
2 failure to fully comply with a support order, and after the
3 obligor's support obligation is current, to satisfy any monetary
4 judgment against the obligor;

5 (b) That the employer or other payor shall pay to the
6 obligor, on his or her regularly scheduled payday, such income then
7 due which is not required to be withheld as stated on the notice or
8 pursuant to any court order;

9 (c) That the employer or other payor shall not withhold
10 more than the maximum amount permitted to be withheld under section
11 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C.
12 1673(b) (2) (A) and (B), and the amount withheld, including interest,
13 to satisfy an arrearage of child, spousal, or medical support or
14 any monetary judgment when added to the amount withheld to pay
15 current support and the fee provided for in subdivision (2) (d) of
16 this section shall not exceed such maximum amount;

17 (d) That the employer or other payor may assess an
18 additional administrative fee from the obligor's disposable income
19 not to exceed two dollars and fifty cents in any calendar month
20 as compensation for the employer's or other payor's reasonable cost
21 incurred in complying with the notice;

22 (e) That the employer or other payor shall remit, within
23 seven days after the date the obligor is paid and in the manner
24 specified in the notice, the income withheld, less the deduction
25 allowed as an administrative fee by subdivision (2) (d) of this

1 section, to the State Disbursement Unit and shall notify the unit
2 of the date such income was withheld;

3 (f) That the notice to withhold income shall terminate
4 with respect to the employer or other payor without any court
5 action or action by the obligor thirty days after the obligor
6 ceases employment with or is no longer entitled to income from such
7 employer or other payor;

8 (g) That the employer or other payor may combine amounts
9 required to be withheld from the income of two or more obligors in
10 a single payment to the unit if the portion of the single payment
11 which is attributable to each individual obligor is separately
12 identified;

13 (h) That an employer or other payor who fails to withhold
14 and remit income of an obligor after receiving proper notice or who
15 discriminates, demotes, disciplines, or terminates an employee or
16 payee after receiving a notice to withhold income shall be subject
17 to the penalties prescribed in subsections (4) and (5) of this
18 section; and

19 (i) That if the employer or other payor receives more
20 than one notice to withhold income of a single obligor and the
21 amount of income available to be withheld pursuant to the limits
22 specified in subdivision (c) of this subsection is insufficient to
23 satisfy the total support amount ~~certified~~ stated in the notices,
24 the income available shall first be applied to current support. If
25 the total amount of income available to be withheld is insufficient

1 to satisfy the total amount of current support ~~certified~~ stated
2 by the notices, the employer or other payor shall withhold for
3 each notice the proportion that the amount of the current support
4 ~~certified~~ stated in such notice bears to the total amount of
5 current support ~~certified~~ stated in all notices received for
6 the obligor. Any remaining income available to be withheld after
7 current support is satisfied for all notices shall be applied to
8 arrearages. If arrearages are ~~certified~~ stated in more than one
9 notice, the employer or other payor shall withhold for each notice
10 the proportion that the amount of the arrearage ~~certified~~ stated in
11 such notice bears to the total amount of arrearage ~~certified~~ stated
12 in all notices received for the obligor. Any income available to be
13 withheld after the obligor's support obligation is current shall be
14 applied to any monetary judgment. If a monetary judgment is stated
15 in more than one notice, the employer or other payor shall withhold
16 for each notice the proportion that the amount of the monetary
17 judgments stated in such notice bears to the total amount of
18 monetary judgments stated in all notices received for the obligor.

19 Compliance with the order by the employer or other payor
20 shall operate as a discharge of the employer's or other payor's
21 liability to the obligor as to the portion of the obligor's income
22 withheld.

23 (3) The obligor shall deliver the notice to withhold
24 income to his or her current employer or other payor and provide a
25 copy of such notice to the clerk of the district court.

1 (4) Any employer or other payor who fails to withhold and
2 remit any income of an obligor receiving income from the employer
3 or other payor, after proper notice as provided in subsection (2)
4 of this section, shall be required to pay to the unit the amount
5 specified in the notice.

6 ~~(5)~~ (5) (a) An employer or other payor shall not use an
7 order or notice to withhold income or order or the possibility of
8 income withholding as a basis for ~~(a)~~ (i) discrimination in hiring,
9 ~~(b)~~ (ii) demotion of an employee or payee, ~~(c)~~ (iii) disciplinary
10 action against an employee or payee, or ~~(d)~~ (iv) termination of an
11 employee or payee.

12 (b) Upon application by the obligor and after a hearing
13 on the matter, the court may impose a civil fine of up to five
14 hundred dollars for each violation of this subsection.

15 (c) An employer or other payor who violates this
16 subsection shall be required to make full restitution to the
17 aggrieved employee or payee, including reinstatement and backpay.

18 (6) When an obligor ceases employment with or is no
19 longer entitled to income from an employer or other payor, the
20 notice to withhold income shall not cease to operate against the
21 obligor and income withholding shall continue to apply to any
22 subsequent employment or income of the obligor. The notice to
23 withhold income shall terminate with respect to the employer or
24 other payor without any court action or action by the obligor
25 thirty days after the obligor ceases employment with or is no

1 longer entitled to income from such employer or other payor. A
2 notice to withhold income shall also terminate when the child,
3 spousal, or medical support obligation terminates, and all past-due
4 support has been paid, and any monetary judgment has been paid, in
5 which case the obligor shall notify the employer or other payor to
6 cease withholding income.

7 (7) A notice to withhold income may be modified or
8 revoked by a court of competent jurisdiction as a result of
9 modification of the support order. A notice to withhold income may
10 also be modified or revoked by a court of competent jurisdiction,
11 for other good cause shown, after notice and a hearing on the
12 issue.

13 (8) The obligee or obligor may file an action in district
14 court to enforce this section.

15 (9) If after an order is issued in any case under this
16 section the case becomes one in which services are provided under
17 Title IV-D of the federal Social Security Act, as amended, the
18 county attorney or authorized attorney or the Department of Health
19 and Human Services shall implement income withholding as otherwise
20 provided in the Income Withholding for Child Support Act.

21 Sec. 33. Section 43-1720, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 43-1720 If the department has previously sent a notice of
24 assignment and opportunity for hearing on the same support order
25 under section 48-647, the county attorney, authorized attorney,

1 or the department shall ~~certify~~ state the amount to be withheld
2 from an obligor's disposable income pursuant to section 43-1722
3 and shall notify the obligor's employer or other payor pursuant
4 to section 43-1723. If the department has not previously sent
5 such notice, and except in cases in which the court has ordered
6 income withholding pursuant to subsection (1) of section 43-1718.01
7 or section 43-1718.02, upon receiving certification pursuant to
8 section 42-358 or notice of delinquent payments of medical support,
9 the county attorney, the authorized attorney, or the department
10 shall send a notice by certified mail to the last-known address of
11 the obligor stating:

12 (1) That an assignment of his or her income by means of
13 income withholding will go into effect within fifteen days after
14 the date the notice is sent;

15 (2) That the income withholding will continue to apply to
16 any subsequent employer or other payor of the obligor;

17 (3) The amount of support and any monetary judgment the
18 obligor owes;

19 (4) The amount of income that will be withheld; and

20 (5) That within the fifteen-day period, the obligor may
21 request a hearing in the manner specified in the notice to contest
22 a mistake of fact. For purposes of this subdivision, mistake of
23 fact shall mean (a) an error in the amount of current or overdue
24 support or the amount of any monetary judgment, (b) an error in
25 the identity of the obligor, or (c) an error in the amount to be

1 withheld as provided in section 43-1722.

2 Sec. 34. Section 43-1722, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 43-1722 (1) If no hearing is requested by the obligor,
5 (2) if after a hearing the department determines that the
6 assignment should go into effect, (3) in cases in which the
7 court has ordered income withholding pursuant to subsection (1)
8 of section 43-1718.01, or (4) in cases in which the court has
9 ordered income withholding pursuant to section 43-1718.02, which
10 case subsequently becomes one in which services are being provided
11 under Title IV-D of the federal Social Security Act, as amended,
12 the county attorney, the authorized attorney, or the department
13 shall ~~certify~~ state the amount to be withheld from the obligor's
14 disposable income. Such amount shall not in any case exceed the
15 maximum amount permitted to be withheld under section 303(b) of
16 the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b) (2) (A)
17 and (B), and the amount withheld, including interest, to satisfy
18 an arrearage of child, spousal, or medical support or any monetary
19 judgment when added to the amount withheld to pay current support
20 and the fee provided for in section 43-1723 shall not exceed such
21 maximum amount.

22 Sec. 35. Section 43-1723, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 43-1723 Except as otherwise provided in this section,
25 the county attorney, the authorized attorney, or the department

1 shall notify the obligor's employer or other payor, by first-class
2 mail or by electronic means, within the time determined by the
3 department which shall comply with the requirements of Title IV-D
4 of the federal Social Security Act, as amended. The notice shall
5 specify the basis for the assignment of income and shall direct:

6 (1) That the employer or other payor shall withhold from
7 the obligor's disposable income the amount ~~certified~~ stated by the
8 county attorney, the authorized attorney, or the department for
9 the purpose of reducing and satisfying the obligor's (a) previous
10 arrearage in child, spousal, or medical support payments arising
11 from the obligor's failure to fully comply with a support order
12 previously entered, and (b) ongoing obligation for support payments
13 as they become due, and (c) then any monetary judgment;

14 (2) That the employer or other payor shall implement
15 income withholding no later than the first pay period that begins
16 following the date on the notice;

17 (3) That the employer or other payor shall pay to the
18 obligor, on his or her regularly scheduled payday, such income
19 then due which is not ~~certified~~ stated to be withheld pursuant to
20 section 43-1722 or any court order;

21 (4) That the employer or other payor may assess an
22 additional administrative fee from the obligor's disposable income
23 not to exceed two dollars and fifty cents in any calendar month
24 as compensation for the employer's or other payor's reasonable cost
25 incurred in complying with the notice;

1 (5) That the employer or other payor shall remit, within
2 seven days after the date the obligor is paid and in the manner
3 specified in the notice, the income withheld, less the deduction
4 allowed as an administrative expense by subdivision (4) of this
5 section, to the State Disbursement Unit as designated in the notice
6 and shall notify the unit of the date such income was withheld;

7 (6) That the employer or other payor shall notify the
8 county attorney, the authorized attorney, or the department in
9 writing of the termination of the employment or income of the
10 obligor, the last-known address of the obligor, and the name and
11 address of the obligor's new employer or other payor, if known, and
12 shall provide such written notification within thirty days after
13 the termination of employment or income;

14 (7) That income withholding is binding on the employer
15 or other payor until further notice by the county attorney, the
16 authorized attorney, or the department;

17 (8) That the employer or other payor may combine amounts
18 required to be withheld from the income of two or more obligors in
19 a single payment to the unit as designated in an income withholding
20 notice if the portion of the single payment which is attributable
21 to each individual obligor is separately identified;

22 (9) That an employer or other payor who fails to withhold
23 and remit income of an obligor after receiving proper notice or who
24 discriminates, demotes, disciplines, or terminates an employee or
25 payee after receiving an income withholding notice shall be subject

1 to the penalties prescribed in sections 43-1724 and 43-1725; and

2 (10) That if the employer or other payor receives more

3 than one notice to withhold income of a single obligor and

4 the amount of income available to be withheld pursuant to the

5 limits specified in section 43-1722 is insufficient to satisfy

6 the total support amount ~~certified~~ stated in the notices, the

7 income available shall first be applied to current support. If the

8 total amount of income available to be withheld is insufficient

9 to satisfy the total amount of current support ~~certified~~ stated

10 by the notices, the employer or other payor shall withhold for

11 each notice the proportion that the amount of the current support

12 ~~certified~~ stated in such notice bears to the total amount of

13 current support ~~certified~~ stated in all notices received for

14 the obligor. Any remaining income available to be withheld after

15 current support is satisfied for all notices shall be applied to

16 arrearages. If arrearages are ~~certified~~ stated in more than one

17 notice, the employer or other payor shall withhold for each notice

18 the proportion that the amount of the arrearage ~~certified~~ stated in

19 such notice bears to the total amount of arrearage ~~certified~~ stated

20 in all notices received for the obligor. Any income available to be

21 withheld after the obligor's support obligation is current shall be

22 applied to any monetary judgment. If a monetary judgment is stated

23 in more than one notice, the employer or other payor shall withhold

24 for each notice the proportion that the amount of the monetary

25 judgments stated in such notice bears to the total amount of

1 monetary judgments stated in all notices received for the obligor.

2 Compliance with the order by the employer or other payor
3 shall operate as a discharge of the employer's or other payor's
4 liability to the obligor as to the portion of the obligor's income
5 withheld. The county attorney, the authorized attorney, or the
6 department need not notify the Commissioner of Labor as a payor if
7 the commissioner is withholding for child support from the obligor
8 under section 48-647 for the same support order.

9 Sec. 36. Section 43-1724, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 43-1724 Any employer or other payor who fails to withhold
12 and remit any income of an obligor receiving income from the
13 employer or other payor, after proper notice as provided in
14 section 43-1723, shall be required to pay the ~~certified~~ stated
15 amount to the State Disbursement Unit. The county attorney or
16 authorized attorney may file an action in district court to
17 enforce this section. The court may sanction an employer or other
18 payor twenty-five dollars per day, up to five hundred dollars per
19 incident, for failure to comply with proper notice.

20 Sec. 37. Section 43-1726, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 43-1726 When an obligor ceases employment with or is
23 no longer entitled to income from an employer or other payor,
24 the notice to withhold income shall not cease to operate against
25 the obligor and income withholding shall continue to apply to

1 any subsequent employment or income of the obligor. The notice
2 to withhold income shall terminate with respect to the employer
3 or other payor without any court action or action by the county
4 attorney, the authorized attorney, or the department thirty days
5 after the obligor ceases employment with or is no longer entitled
6 to income from such employer or other payor, except that a notice
7 to withhold income shall not terminate with respect to unemployment
8 compensation benefits being withheld by the Commissioner of Labor
9 pursuant to section 48-647. The employer or other payor shall
10 return a copy of the notice to withhold income to the county
11 attorney, the authorized attorney, or the department, indicate
12 that the employment or obligation to pay income has ceased, and
13 cooperate in providing any known forwarding information. The county
14 attorney, the authorized attorney, or the department shall notify
15 the clerk of the appropriate district court that such employment or
16 obligation to pay income has ceased. A notice to withhold income
17 shall also terminate when the child, spousal, or medical support
18 obligation terminates, and all past-due support has been paid, and
19 any monetary judgments have been paid, in which case the county
20 attorney, the authorized attorney, or the department shall notify
21 the employer or other payor to cease withholding income.

22 Sec. 38. Section 43-1727, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 43-1727 (1) An income withholding notice may be modified
25 or revoked by a court of competent jurisdiction or by the county

1 attorney, the authorized attorney, or the department as a result
2 of a review conducted pursuant to sections 43-512.12 to 43-512.18.
3 An income withholding notice may also be modified or revoked by
4 a court of competent jurisdiction, for other good cause shown,
5 after notice and a hearing on the issue. An income withholding
6 notice may also be modified or revoked by the county attorney, the
7 authorized attorney, or the department as provided in subsection
8 (2) of this section or for other good cause. Payment by the obligor
9 of overdue support or any monetary judgment, other than through
10 income withholding, after receipt of notice of income withholding
11 shall not by itself constitute good cause for modifying or revoking
12 an income withholding notice.

13 (2) When income withholding has been implemented and, as
14 a result, a support delinquency has been eliminated, the Title
15 IV-D Division or its designee shall notify the county attorney,
16 the authorized attorney, or the department. Upon receipt of such
17 notification, the county attorney, the authorized attorney, or the
18 department shall modify the income withholding notice to require
19 income withholding for current support ~~only~~ and any monetary
20 judgments and shall notify the employer or other payor of the
21 change in the same manner as provided in section 43-1723.

22 Sec. 39. Section 43-3330, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 43-3330 A financial institution shall receive from the
25 department a listing of obligors to be used in matches within the

1 financial institution's system. The listing from the department
2 shall include the name and social security number or taxpayer
3 identification number of each obligor to be used in matches within
4 the financial institution's system. The financial institution shall
5 receive the listing within thirty days after the end of each
6 calendar quarter subsequent to January 1, 1998, and shall match the
7 listing to its records of accounts held in one or more individuals'
8 names which are open accounts and such accounts closed within the
9 preceding calendar quarter within thirty days after receiving the
10 listing and provide the department with a match listing of all
11 matches made within five working days of the match. The match
12 listing from the financial institution shall include the name,
13 address, and social security number or taxpayer identification
14 number of each obligor matched and the balance of each account. The
15 financial institution shall also provide the names and addresses of
16 all other owners of accounts in the match listing as reflected on a
17 signature card or other similar document on file with the financial
18 institution. The financial institution shall submit all match
19 listings by disk, magnetic tape, or other medium approved by the
20 department. Nothing in this section shall (1) require a financial
21 institution to disclose the account number assigned to the account
22 of any individual or (2) serve to encumber the ownership interest
23 of any person in or impact any right of setoff against an account.
24 The financial institution shall maintain the confidentiality of all
25 records supplied and shall use the records only for the purposes

1 of this section. To maintain the confidentiality of the listing and
2 match listing, the department shall implement appropriate security
3 provisions for the listing and match listing which are as stringent
4 as those established under the Federal Tax Information Security
5 Guidelines for federal, state, and local agencies.

6 Sec. 40. Section 47-502, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 47-502 Any person sentenced to a city or county jail
9 shall, after the fifteenth day of his or her confinement, have
10 his or her remaining term reduced seven days for each fourteen
11 consecutive days one day for each day of his or her sentence during
12 which he or she has not committed any breach of discipline or other
13 violation of jail regulations. The reductions authorized by this
14 section shall be granted at the end of each period of fourteen
15 days, with such periods to run consecutively from the date of
16 confinement following sentencing.

17 Sec. 41. Section 49-1501, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 49-1501 Sections 49-1501 to 49-1561 and section 42 of
20 this act shall be known and may be cited as the Nebraska Short Form
21 Act.

22 Sec. 42. An agent or attorney in fact under a power of
23 attorney, whether the power of attorney is durable or nondurable,
24 may do the following on behalf of the principal or with the
25 principal's property only if the power of attorney expressly grants

1 the agent or attorney in fact the authority and exercise of the
 2 authority is not otherwise prohibited by another agreement or
 3 instrument to which the authority or property is subject:

4 (1) Create or change rights of survivorship; or

5 (2) Create or change a beneficiary designation.

6 Sec. 43. An agent or attorney in fact under a power of
 7 attorney, whether the power of attorney is durable or nondurable,
 8 may do the following on behalf of the principal or with the
 9 principal's property only if the power of attorney expressly grants
 10 the agent or attorney in fact the authority and exercise of the
 11 authority is not otherwise prohibited by another agreement or
 12 instrument to which the authority or property is subject:

13 (1) Create or change rights of survivorship; or

14 (2) Create or change a beneficiary designation.

15 Sec. 44. Section 69-2304, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 69-2304 A notice given pursuant to section 69-2303 shall
 18 contain one of the following statements, as appropriate:

19 (1) "If you fail to reclaim the property, it will be
 20 sold at a public sale after notice of the sale has been given
 21 by publication. You have the right to bid on the property at
 22 this sale. After the property is sold and the costs of storage,
 23 advertising, and sale are deducted, the remaining money will
 24 be turned over to the State Treasurer pursuant to the Uniform
 25 Disposition of Unclaimed Property Act. You may claim the remaining

1 money from the office of the State Treasurer as provided in such
2 act."; or

3 (2) "Because this property is believed to be worth less
4 than ~~two hundred fifty~~ one thousand dollars, it may be kept, sold,
5 or destroyed without further notice if you fail to reclaim it
6 within the time indicated in this notice."

7 Sec. 45. Section 69-2308, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 69-2308 (1) If the personal property is not released
10 pursuant to section 69-2307, it shall be sold at public sale
11 by competitive bidding, except that if the landlord reasonably
12 believes that the total resale value of the property not released
13 is less than ~~two hundred fifty~~ one thousand dollars, he or she
14 may retain such property for his or her own use or dispose of it
15 in any manner he or she chooses. At such time as the decision to
16 sell or to retain is made, any locked trunk, valise, box, or other
17 container shall be opened, if practicable, with as little damage as
18 possible, and its contents evaluated. Nothing in this section shall
19 be construed to preclude the landlord or the tenant from bidding
20 on the property at the public sale. The successful bidder's title
21 shall be subject to ownership rights, liens, and security interests
22 which have priority by law.

23 (2) Notice of the time and place of the public sale shall
24 be given by advertisement of the sale published once a week for
25 two consecutive weeks in a newspaper of general circulation in the

1 county where the sale is to be held. If there is no newspaper of
2 general circulation in the county where the sale is to be held,
3 the advertisement shall be posted no fewer than ten days before the
4 sale in not less than six conspicuous places in the neighborhood of
5 the proposed sale. The sale shall be held at the nearest suitable
6 place to the place where the personal property is held or stored.
7 The advertisement shall include a description of the goods, the
8 name of the former tenant, and the time and place of the sale.
9 The sale shall take place no sooner than ten days after the first
10 publication. The last publication shall be no less than five days
11 before the sale is to be held. Notice of sale may be published
12 before the last of the dates specified for taking possession of the
13 property in any notice given pursuant to section 69-2303.

14 (3) The notice of the sale shall describe the property to
15 be sold in a manner reasonably adequate to permit the owner of the
16 property to identify it. The notice may describe all or a portion
17 of the property, but the limitation of liability provided by
18 section 69-2309 shall not release the landlord from any liability
19 arising from the disposition of property not described in the
20 notice.

21 (4) After deduction of the reasonable costs of storage,
22 advertising, and sale, any proceeds of the sale not claimed by the
23 former tenant, an owner other than such tenant, or another person
24 having an interest in the proceeds shall, not later than thirty
25 days after the date of sale, be remitted to the State Treasurer

1 for disposition pursuant to the Uniform Disposition of Unclaimed
2 Property Act. The former tenant, other owner, or other person
3 having interest in the proceeds may claim the proceeds by complying
4 with the act. If the State Treasurer pays the proceeds or any part
5 thereof to a claimant, neither the State Treasurer nor any employee
6 thereof shall be liable to any other claimant as to the amount
7 paid.

8 Sec. 46. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
9 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 27, 28, 29, 30, 31, 32,
10 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 48 of this
11 act become operative three calendar months after the adjournment of
12 this legislative session. Section 23 of this act becomes operative
13 on January 1, 2011. The other sections of this act become operative
14 on their effective date.

15 Sec. 47. Original sections 43-512.12 and 43-512.15,
16 Revised Statutes Supplement, 2009, are repealed.

17 Sec. 48. Original sections 25-410, 25-1625, 25-2720.01,
18 25-2803, 25-2804, 28-201, 28-502, 28-503, 28-504, 28-1006, 28-1012,
19 28-1019, 29-818, 29-1207, 29-1208, 29-2412, 30-2322, 30-2323,
20 30-2325, 30-2664, 30-2715, 43-1701, 43-1702, 43-1703, 43-1717,
21 43-1718.02, 43-1720, 43-1722, 43-1723, 43-1724, 43-1726, 43-1727,
22 43-3330, 47-502, 49-1501, 69-2304, and 69-2308, Reissue Revised
23 Statutes of Nebraska, and section 25-1628, Revised Statutes
24 Supplement, 2009, are repealed.

25 Sec. 49. Since an emergency exists, this act takes effect

LB 712

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1 when passed and approved according to law.